

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES C. GARRETT,

Petitioner,

V.

ROB MCKENNA,

Respondent.

CASE NO. C05-0898RSM

ORDER DENYING CERTIFICATE OF APPEALABILITY

On November 14, 2005, petitioner filed a Notice of Appeal, which was construed by the Court as a petition for Certificate of Appealability. 28 U.S.C. § 2253. To obtain such a certificate and proceed with an appeal of the denial of a petition for habeas corpus, the petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, petitioner “must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983) (citations omitted).

As petitioner has submitted no separate statement of issues for appeal, the Court has reviewed his objections to the two Report and Recommendations (“R&R”) issued in his case, and his motion for reconsideration, in which petitioner asked the Court to reconsider the Orders

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1 adopting those R&Rs. One of the R&Rs recommended the denial of an emergency stay and
2 injunction based on lack of personal jurisdiction. (Dkt. #15). The Court adopted that R&R
3 without additional comment. (Dkt. #22). The other R&R recommended the dismissal of
4 petitioner's action based on lack of jurisdiction because petitioner had failed to name the correct
5 defendant. (Dkt. #16). The Court adopted that R&R, noting that, although petitioner requested
6 to amend his petition in his objections, that request was untimely, especially in light of the fact
7 that petitioner had been alerted to the deficiency prior to the issuance of the R&R. (Dkt. #23).
8 In his motion for reconsideration, petitioner argued that this Court violated his constitutional
9 rights by refusing to let him amend his petition.

10 The Court finds that reasonable jurists would find no debatable issue here. There is no
11 dispute that petitioner named the wrong respondent, divesting this Court of jurisdiction over his
12 habeas petition, and his motion to amend was untimely. Accordingly, as petitioner has failed to
13 make a substantial showing of a denial of a constitutional right, the petition for Certificate of
14 Appealability is DENIED. *See* 28 U.S.C. § 2253(c)(2).

15 The Clerk shall forward a copy of this Order to petitioner and all counsel of record.

16 DATED this 5 day of December 2005.



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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
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